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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/803,098 | 03/18/2004 | Yoshikazu Hirose | 26B-028 | 5293 |

23400 7590 08/30/2006

POSZ LAW GROUP, PLC
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SUITE 101
RESTON, VA 20191

EXAMINER

PHILLIPS, FORREST M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2837

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,098

Applicant(s)

HIROSE ET AL.

Examiner

Forrest M. Phillips

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/18/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2837

DETAILED ACTION

Applicant's election without traverse of Embodiment of figure 2 in the reply filed on 8/17/06 is acknowledged.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Air intake silencing apparatus having porous member.

Claim Objections

Claim 4 recites the limitation "resin wall" in the fourth line. There is insufficient antecedent basis for this limitation in the claim. Claim has been treated as reading "the wall"

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese patent publication number 63-285257 (to be referred to as '257).

With respect to claim 1 '257 discloses an air intake apparatus comprising: an intake air passageway portion which includes an air intake duct (10 in figure 1) continuing to an inlet for introducing outside air, and which serves as an intake air path reaching an engine body; and a permeable port (14 in figure 1) including an aperture provided in a part of the intake air passageway portion (15 in figure 2) and for allowing the inside of the intake air passageway portion to communicate with the outside thereof, and a porous member (16 in figure 2) covering the aperture; wherein the permeable port is provided in at least a part of a region between a central position of the whole length of the air intake duct and a central position of the whole length of the intake air passageway portion (refer to figure 1).

With respect to claim 2, '257 further discloses wherein the permeable port is provided in a position including at least one of the central position of the whole length of the air intake duct and the central position of the whole length of the intake air passageway portion (refer to figure 1).

With respect to claim 3 '257 further discloses wherein the permeable port is provided in positions including at least the central position of the whole length of the air intake duct and the central position of the whole length of the intake air passageway portion (refer to figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 2837

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent publication '257 in view of the Japanese patent 02001193587a to Kino (hence referred to as Kino).

With respect to claim 4 '257 discloses the air intake apparatus of claim 1.

'257 does not disclose wherein the permeable port is formed by hot welding of a PET porous member to the intake air passageway portion external surface side of the aperture formed in the resin wall surfaces of the air intake duct and the dirty side of the air cleaner.

Kino discloses however that the permeable port (13 in figure 2) is constructed of a porous member fixed to the intake air passageway portion external surface side of the aperture formed in the wall surfaces of the air intake duct and the dirty side of the air cleaner.

The method of forming is not germane to the patentability of the device itself. Therefore the limitation of hot welding has not been given patentable weight.

With respect to claim 5 Kino further discloses wherein the permeable port (13 in figure 1) is formed in a way that each outer edge (23 in figure 1) of the aperture of the intake air passageway portion is formed to project outward from the intake air passageway portion, and the porous member(14 in figure 1) is attached to the projecting outer edge.

Again the welding limitation has not been given patentable weight as was the case in claim 4.

With respect to claim 6 Kino further discloses wherein the permeable member is formed in a way that an end portion of each projecting outer edge is made substantially parallel with the external surface of the intake air passageway portion, and the porous member is welded to the end portion (refer to figure 2d close up).

With respect to claim 7 Kino further discloses wherein the permeable member (14 in figure 1) is formed in a way that the porous member formed into a predetermined shape (rectangular) in advance is used.

The method of forming a device is not germane to the patentability of the device itself. Therefore the limitation of insert molding has not been given patentable weight.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thornburgh (US4778029); and Morohishi et al. (US6386317).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forrest M. Phillips whose telephone number is 5712729020. The examiner can normally be reached on Monday through Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 5712721988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2837

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FP


LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER